**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Trade Tax Revision No. 25 of 2004

Sarve Shri Bansal Gramodhyog ..... Revisionist

Versus

Commissioner, of Trade Tax,
Uttaranchal, Dehradun ..... Revisionist

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Trade Tax Revision No. 26 of 2004

Sarve Shri Bansal Gramodhyog ..... Revisionist

Versus

Commissioner of Trade Tax,
Uttaranchal, Dehradun ..... Respondents

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Trade Tax Revision No. 27 of 2004

Sarve Shri Bansal Gramodhyog ..... Revisionist

Versus

Commissioner of Trade Tax,
Uttaranchal, Dehradun ..... Respondents

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Sri. S.K.Posti, learned counsel for the revisionist.
Standing Counsel for the State.

**Hon.Rajesh Tandon, J.**

All the above trade tax revisions are connected, therefore, they are being disposed of together.

By the impugned trade tax revisionists the revisionists have challenged the order dated 28.07.2004 by which the second appeals filed by them under section 10 of the U.P. Trade Tax Act, 1948 as applicable in Uttaranchal have been rejected.

Briefly stated facts are that the revisionists are a partnership concern of Mrs. Kanta Bansal w/o Sri Babulal Bansal and engaged in the sale of *'Besan'* after converting the purchased Gram pulse from the State of U.P. into Besan and selling it on the commission basis in the State of U.P. The

revisionists/applicants have also stated that they are registered under Uttaranchal Trade Tax Act and are provisionally assessed under Section 41(6) of the U.P. Trade Tax Rule as applicable in the State of Uttaranchal.

The Assessing Authority issued notices to the revisionists and in compliance of the notices issued by the Assessing Authority, revisionists submitted their reply before the Assessing Authority, but the Assessing Authority did not proceed with the matter and fixed the next date. However, in March 2004, ex parte order of assessment was passed with regard to the sale of Besan of the applicant for the month of April, May and June, 2003 and imposed tax on the sale. The applicants/revisionists aggrieved by the aforesaid order went in appeal under section 9 of the U.P. Trade Tax Act applicable in the State of Uttaranchal on the ground that the order in question was ex parte one. The revisionists have also filed an application before the First Appellate Court for stay of the recovery of the assessed tax on the basis of ex parte order. The Assessing Authority passed the order directing the applicant to deposit 75% and stayed the remaining 25%.

Aggrieved by the order, the applicant/revisionists further approached to the Second Appellate Court under section 10 of the Trade Tax Act. The Trade Tax Second Appellate Court passed the impugned order by which he has observed that by issuing the stay order the appeal pending before the first appellate Court under section 9 shall be affected on its merits.

Sub section 3-A of the U.P. Trade Tax Act provides that the Appellate Authority may stay realization of the tax, fee and penalty payable by the appellant till disposal of the appeal. Sub-section 3-A of section 9 reads as under:

"The Appellate Authority -

(a) shall in case where the appellant makes a request under the proviso to sub-section (1); and
(b) may, in any other case on the application of the appellant and after giving the Commissioner a reasonable opportunity of being heard,

stay the realization of the amount of tax, fee and penalty payable by the appellant till the disposal of appeal:"

The applicant/revisionist approached the second Appellate Authority after the refusal of the first appellate Court in granting the stay in toto. The Second Appellate Court while exercising the powers under section 10 of the Act has rejected the application for stay and the appeal on the ground that the judgment of the first appellate Court shall be influenced by the stay order.

However, it is open for the second appellate Court to pass the orders with regard to stay of penalty or tax by stating that it will not affect on merits.

In view of the aforesaid, the present trade tax revisions are disposed of with the observation that the pending disposal of appeal under section 9 of the U.P. Trade Tax Act, 1948 the realization of the amount shall remain in abeyance and the same shall not prejudice rights of the applicant or Tribunal or Appellate Court to decide the case on merits.

All the revisions are disposed of accordingly.

**(Rajesh Tandon, J.)**
**2.9.2004**

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